REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN TRANSMISSION CORPORATION,
Petitioner,

- versus -

C.T.A. CASES NOS. 3634 & 3668

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

D E C I S I O N

These cases coming to Us present common factual background and related issues and are dealt with in one opinion.

The facts briefly recounted -

Petitioner is a registered preferred pioneer enterprise with the Board of Investments under R.A. No. 6135 for the manufacture and export of automotive transmissions under Certificate of Registration No. 73-291 dated October 17, 1973.

Petitioner during the year in question has incurred obligation abroad which it pays interest. It has entered in its books monthly charges to its interest expenses account. These represent among others, the interest on its year account with Missho-Iwai American Corporation. This interest is remitted periodically to its creditors abroad.

On April 15, 1981, respondent Commissioner issued demand letter No. SARD 76IT-810141 and assessment notices, assessing petitioner for its 1976 deficiency income tax and withholding tax-at-source in the respective amounts of P13,051.74 (inclusive of interest) and P10,530.12. The latter consists only of interest and compromise penalty imposed for late payment of the basic withholding tax on the interest due foreign creditor.

On May 22, 1981 petitioner protested the withholding tax at source assessment in a letter dated May 21, 1981. Subsequently, petitioner without waiting for the respondent's resolution on the protest paid the interest and compromise penalty imposed for late payment of the withholding tax at source.

As a consequence, respondent closed the assessment case against the petitioner in a letter dated June 25, 1982, to wit:

> "With reference to your letter dated May 28, 1981 and August 18, 1981, relative to your deficiency income tax and deficiency withholding tax at source on interest payments for 1976 in the respective amounts of P13,051.74 and P10,530.12, inclusive of interest and penalties, under Assessment No. SARD 76IT-81-0141 dated April 15, 1981, I have the honor to inform you that inasmuch as your aforesaid tax liabilities have

> already been paid under various Confirmation Receipts, this case is now closed and terminated." (Underscoring, respondents)

And here's the rub! Petitioner demurs to the proffered relief premised on "payment" but insists on a "cancellation" of the assessment grounded on the merit of the protest which it did not abandon. Petitioner would have the respondent's letter considered a "denial" as well as a final decision on the protested assessment, hence, the petition for review in CTA Case No. 3634. And as a comforting corollary, petitioner filed another petition claiming the refund of the disputed amount docketed in CTA Case No. 3668.

The bottomline of these cases is the question of whether the obligation to withhold and pay income tax at source on interest due non-resident corporation attaches upon accrual or at the time of payment or remittance.

Respondent considers petitioner's position in the first case untenable for reasons, among others, that the petitioner's payment of the deficiency withholding tax at source assessment, completely and entirely erased its 1976 withholding tax liabilities under Assessment No. SARD-76IT-0141 dated April 15, 1981; that the protest against the said assessment is deemed abandoned and with the withdrawal and cancellation of the said assessment by virtue of payment, the same loses its status as a disputed assessment contemplated under Section 7 of R.A. No. 1125. Furthermore, respondent's letter of June 25, 1982 does not adversely affect the petitioner as in fact it considers petitioner's tax liability as closed and terminated. Section 11 of R.A. No. 1125 is quite explicit and clear that only those ADVERSELY affected by a ruling or decision of the Commissioner of Internal Revenue may appeal to this Honorable Court.

We agree. Respondent could not have said it better. Accordingly, this Court has no longer jurisdiction to act on an appeal from an assessment that had already been cancelled, except to dismiss it.

The failed protest notwithstanding, petitioner can yet contest the legality of the tax after it pays it. Under Section 306 of the Tax Code a taxpayer can pay the tax and claim a refund therefor. In the instant case the records show that petitioner paid the basic withholding tax at source upon remittance of the interest to the foreign payee. Respondent avers that the same should have been paid upon accrual in petitioner's books, hence, the assessed interest and penalty for late payment, likewise paid for which a refund is sought in CTA Case No. 3668.

Petitioner has it impressed that it could not remit the interest to the foreign creditor without first securing the approval of the Central Bank. And these restrictions by the Central Bank on remittances abroad are imposed not on individual but on general basis, which are matters of judicial notice. It thus invokes the ruling in the ***Bayer Pharmaceutical, Inc. v. Commissioner of Internal Revenue,*** *CTA Case No. 2846, March 16, 1979; Certiorari denied in* ***Commissioner of Internal Revenue v. Court of Tax Appeals, et. al.,*** *G.R. No. 72054, September 29, 1986*, to wit:

> "We accordingly, rule that since the royalties in question could not be paid or remitted in 1972 by petitioner Bayer Pharmaceuticals, Inc. to non-resident foreign corporation Bayer Aktien Gesellschalft, Leverkusen Bayernerck due to Central Bank restrictions, petitioner was under no obligation to withhold and pay income tax at source on said royalties and therefore, is not liable for the deficiency withholding tax at source assessment of Respondent Commissioner of Internal Revenue xxx."

Going by the pronouncement and insofar as the same is brought to bear upon the circumstances obtaining, there can be no occasion to further speculate when the chips must fall, so to speak, "The time of payment of the royalties is the maturation point of the withholding duty." *(Bayer, supra)*. As was the ruling in the said case, so here with the petitioner. We hesitate to further fashion an issue into a satisfactorily settled legal situation.

WHEREFORE, respondent is hereby ordered to grant the refund of the amount of P10,530.12 representing illegally collected interest and compromise penalty on alleged late payment of withholding tax at source. No costs.

SO ORDERED.

Quezon City, Metro Manila, November 30, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Amante Filler

AMANTE FILLER
Presiding Judge
Court of Tax Appeals